

Message Text

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ACTION AF-18

INFO OCT-01 EUR-25 ISO-00 SY-10 IO-14 CIAE-00 DODE-00

PM-07 H-03 INR-10 L-03 NSAE-00 NSC-10 PA-04 RSC-01

PRS-01 SPC-03 SS-20 USIA-15 ACDA-19 SCA-01 OMB-01

AID-20 DRC-01 /187 W

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R 031100Z DEC 73

FM AMEMBASSY KHARTOUM

TO SECSTATE WASHDC 7439

INFO AMEMBASSY BRUSSELS

C O N F I D E N T I A L KHARTOUM 2615

E.O. 11652: GDS

TAGS: PINS SU

SUBJECT: KHARTOUM ASSASSINATIONS: MAGISTERIAL INQUIRY

REF: KHARTOUM 2560

1. BEING SUMMARY. DURING COURT SESSION DEC. 2, PROSECUTION REBUTTED DEFENSE CLAIM SUDANESE COURT LACKS JURISDICTION. MAGISTRATE EXPECTED ISSUE DECISIONS ON JURISDICTION AND SUMMARY/NON-SUMMARY FORM AT NEXT SESSION SCHEDULED DEC 10. END SUMMARY.

2. THE PROCEEDINGS. MAGISTERIAL INQUIRY SESSION DEC 2 CONSISTED OF STATEMENT BY PROSECUTOR ABDEL MONEIM MUSTAFA REBUTTING DEFENSE CLAIM (REFTEL) THAT SUDANESE COURTS LACK JURISDICTION. DURING STATEMENT, PROSECUTOR NOTED (A) DEFENSE HAD IMPLICITLY ACCEPTED JURISDICTION BY NOT CHALLENGING INQUIRY AT OUTSET, (B) NIMEIRI PRO-PALESTINE SPEECHES IRRELEVANT TO MATTER AT HAND AND WERE IN ANY EVENT SUPERSEDED BY MARCH 6 SPEECH (FOLLOWING MURDERS) IN WHICH NIMEIRI REITERATED GOS SUPPORT PALESTINIAN CAUSE WHILE SIMULTANEOUSLY CONDEMNING CRIME, (C) SLAIN DIPLOMATS WERE UNDER GOS PROTECTION, AND (D) CURRENT INTERNATIONAL LAW HAS ABANDONED LEGAL FICTION THAT EMBASSIES ARE CONSTRUCTIVELY LOCATED IN TERRITORY OF SENBING STATE. PROSECUTION CITED NUMBER OF SUPPORT-

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ING CASES (ALL FROM UK). MAGISTRATE SET NEXT SESSION

FOR DEC 10 WHEN HE SAID HE WOULD ISSUE OPINION ON COURT JURISDICTION. IF SUDANESE JURISDICTION CONFIRMED, HE ANNOUNCED HE WOULD DECIDE ON SUMMARY OR NON-SUMMARY FORM FOR INQUIRY (PENDING FROM NOV 18 SESSION--KHARTOUM 2510).

3. LEGAL COMMENT. DURING STATEMENT, PROSECUTOR NOTED LOOSELY (AND PERHAPS UNWISELY) THAT DEFENSE CLAIM FOR NON-JURISDICTION ALSO WEAKENED BY RELEASE OF DRIVER/RADIO OPERATOR WHO AS "MEMBERS OF FATAH HAD DIPLOMATIC IMMUNITY". AT THIS POINT, TERRORIST LEADER RIDZIK QAS POINTED TO HIMSELF IMPLYING THAT AS FATAH MEMBER HE HAD SIMILAR IMMUNITY. WE WILL BE CONSULTING ON THIS POINT WITH EMBASSY ATTORNEY, BUT WE BELIEVE PROSECUTOR'S LANGUAGE UNFORTUNATE IN THAT IT APPARENTLY IMPLIED FATAH MEMBERSHIP RATHER THAN DIPLOMATIC ACCREDITATION IS POSSIBLE BASIS FOR IMMUNITY FROM PROSECUTION. (RIDZIK WAS NOT RPT NOT LISTED IN DIPLOMATIC LIST AS MEMBER FATAH OFFICE. DRIVER/RADIO OPERATORS WERE STAFF MEMBER ONLY.)

4. ATMOSPHERE. ATTENDANCE SOMEWHAT INCREASED WITH ABOUT 40 PALESTINIAN STUDENTS PRESENT WHO FLASHED "V" SIGNS AND SLOGANS WHEN DEFENDANTS ENTERED (PRIOR MAGISTRATE). NO DISTURBANCE DURING SESSION ITSELF. MEDIA COVERAGE MINIMAL.

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